IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6827 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL SHANKARBHAI VASHRAMBHAI

Versus

PATDI GROUP CO OPERATIVE MULTI PURPOSE SOCIETY LTD

Appearance:

1. Special Civil Application No. 6827 of 2002

MR BAIJU JOSHI for Petitioner No. 1-2

PS GOGIA for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 28/10/2002

ORAL JUDGEMENT

1. The present petition is preferred by the petitioners against the order dated 25-2-2002 passed by

the learned Nominee below application preferred by the original plaintiff for correction/ addition /modification of the judgement and award.

2. Heard Mr.Joshi, learned Counsel for the petitioners and Mr.Gogia for the respondent.

3. There is no dispute on the point that the learned Nominee passed the judgement and award on 9-11-2001 in Lavad Case No.194/2001. Thereafter, the respondent, who is the original plaintiff moved an application to the learned Nominee for making change in the judgement and award by submitting the application dated 20-2-2002. The learned Nominee, without giving any opportunity to the petitioners, has allowed the said application as per the order dated 25-2-2002. There is no dispute on the point that the opportunity of hearing whatsoever has not been given to the petitioners herein before removing the operative portion of the order or before passing the order dated 25-2-2002. The order dated 25-2-2002 passed by the learned Nominee deserves to be quashed and set aside only on the ground of breach of principles of natural justice. It is well settled that the opportunity of hearing or the observance of principles of natural justice are to be made before passing any order against any party concerned.

4. In the present case, the judgement was passed. Thereafter the original plaintiff moved an application for modification of the judgement and, therefore, it was obligatory on the part of the learned Nominee to give opportunity of hearing to the party concerned before modifying the judgement or order. Since no opportunity of hearing is given, the order passed by the learned Nominee cannot be sustained in the eye of law.

5. In view of the aforesaid, the order dated 25-2-2002 passed by the learned Nominee at Annexure "F" below application dated 20-2-2002 submitted by the original plaintiff in Lavad Case No.194/2001 is quashed and set aside. The application of the original plaintiff shall be restored to file. The learned Nominee shall give opportunity of hearing to both the sides and shall render decision in accordance with law. The petition is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent.

28-10-2002 (Jayant Patel, J.)

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